

Union of India ..Appellants

versus

M/s. Eknath Khemchand ..Respondents

**CORAM: D.G.DESHPANDE, J.**  
**DATED: 4TH MAY, 2005**

3. Mr. Samant raised only two contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 12% per annum

and according to him it should be 9% per annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India**. It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. In this case two consignments were booked under Invoice No. 6 and 17 both containing 381 bags, dated 18.11.1978 and 25.11.1978 respectively. All the bags were damaged and assessed at various percentages. Assessment of damage to the consignment was inadequate and much less than the actual damages. The respondents had sustained damages due to negligent acts of the railways and inspite of repeated requests the railways have not disclosed full particulars of transit of the

suit consignments and as the claim was not settled Application came to be filed before the RACT Mumbai. The Tribunal framed as many as 6 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

7. In the result, I pass the following order:

#### **ORDER**

. The appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the

aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

. Appeal disposed of along with Civil Application.

4.5.2005

(D.G. DESHPANDE, J.)